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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,525	11/25/2003	Joanne H. Nor	61141P005	8654

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EXAMINER

NGUYEN, SON T

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 11/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/723,525

Applicant(s)

NOR, JOANNE H.

Examiner

Son T. Nguyen

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 August 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1-14,16-21** are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5984855 (herein 855) in view of US 4214421 (herein 421).

For claim 1, 855 discloses an apparatus for increasing circulation in an equine neck, the apparatus comprising: a neck portion 12 defining a volume substantially conforming to an equine neck; and at least one magnetic strip (col. 3, lines 34-39) coupled to the neck portion, wherein the magnetic strip creates a magnetic field. However, 855 is silent about a head portion having a shape substantially conforming to an equine head.

421 teaches horse blanket and hood apparatus having a head portion having a shape substantially conforming to an equine head coupled to a neck portion (col. 3, lines 20-26). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a head portion that couples to the neck portion as taught by 421 in the apparatus of 855 so as to protect the head area of the horse.

For claim 2, in addition to the above, the head portion of 421 includes a muzzle opening, a pair of eye openings 102 and a pair of ear openings 102. Therefore, the

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combination of 855 as modified by 421 teaches the muzzle opening, a pair of eye openings and a pair of ear openings.

For claim 3, 855 as modified by 421 (emphasis on 855) discloses wherein the at least one magnetic strip comprises at least one flexible magnetic strip to create a magnetic field radiating from the magnetic strip towards one of a horse cervical vertebrae, a horse axis, a horse atlas, and a horse poll (col. 3, lines 28-68).

For claim 4, 855 as modified by 421 (emphasis on 855) discloses wherein the at least one magnetic strip comprises two flexible magnetic strips, each of the two strips detachably coupled to a side of the neck portion to create a magnetic field radiating from the magnetic strip toward the volume (col. 3, lines 28-68).

For claim 5, 855 as modified by 421 (emphasis on 855) discloses wherein each of the two magnetic strips is detachably coupled to the neck portion to be proximate to either side of a cervical vertebrae of the equine neck when the apparatus is in use (col. 3, lines 35-68).

For claim 6, 855 as modified by 421 (emphasis on 855) discloses wherein the neck portion comprises two side walls (where refs. 30,30',32,32' are located) to surround the equine neck, wherein each side wall contains at least one flexible magnetic material strip to create a magnetic field radiating from the at least one flexible magnetic material strip toward the volume.

For claim 7, 855 as modified by 421 (emphasis on 855) discloses an atlas, axis, and cervical vertebrae magnetic strip detachably coupled to both an atlas position pad and axis position pad of the neck portion to create a magnetic field radiating from the

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atlas, axis, and cervical vertebrae magnetic strip toward a region of the volume to be occupied by an equine atlas, axis, and cervical vertebrae (col. 3, lines 29-68).

For claims 8,10,11, 855 as modified by 421 (emphasis on 855) discloses wherein the at least one atlas, axis, and cervical vertebrae magnetic strip comprises a magnetic material that creates a unipolar magnetic field. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a material that creates a bipolar magnetic field in the apparatus of 5 as modified by 421, depending on the user's preference since Applicant stated on page 6 of the specification that either bipolar or unipolar is preferred.

For claim 9, 855 as modified by 421 (emphasis on 855) discloses wherein the at least one atlas, axis, and cervical vertebrae magnetic strip comprises a flexible magnetic material and is adapted to be detachably attached to a dorsal position of the apparatus along a central line of the neck portion proximate to the head portion (col. 3, lines 29-68).

For claim 12, 855 as modified by 421 (emphasis on 855) discloses wherein the at least one magnetic strip comprises a magnetic material that creates a unipolar magnetic field (col. 3, line 67).

For claim 13, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have at least one magnetic strip has a magnetic field strength in the range of 50 gauss to 1000 gauss in the apparatus of 855 as modified by 421, since it has been held that where routine testing and general

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experimental conditions are present, discovering the optimum or workable ranges until the desired effect is achieved involves only routine skill in the art.

For claim 14, 855 as modified by 421 (emphasis on 855) discloses a hook material backing and a loop material backing for detachably coupling to one of a loop material receive and a hook material receive on the neck portion (col. 3, lines 61-65). it would have been obvious to one having ordinary skill in the art at the time the invention was made to have two flexible magnetic material strips that create a bipolar magnetic field having a magnetic field strength on the order of 450 gauss, and wherein each flexible magnetic material strip is about 25.5" by 5 " in the apparatus of 855 as modified by 421, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect is achieved involves only routine skill in the art. For bipolar, see claim 8 for explanation.

For claim 16, 855 as modified by 421 (emphasis on 421) discloses wherein the head portion includes at least one fastener 22,24 to detachably secure the head portion to an equine head.

For claim 17, 855 as modified by 421 (emphasis on 855) discloses wherein the neck portion includes at least one fastener 16,14,18,20 to detachably secure the neck portion to an equine neck.

For claim 18, 855 as modified by 421 further comprising: at least one head portion fastener 22,24 (of 421) to secure the head portion to an equine head, each head portion fastener comprising at least one attachment strap having a first end coupled to a

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first side wall of the head portion such that each head portion fastener may extend under a bottom of the equine head to detachably couple to second side wall of the head portion; and at least one neck portion fastener 16,20,14,18 (of 855) to secure the neck portion to an equine neck, each neck portion fastener comprising at least one attachment strap having a first end coupled to a first side wall of the neck portion such that each head portion fastener may extend under a bottom of the equine neck to detachably couple to second side wall of the neck portion.

For claim 19, 855 discloses an apparatus for increasing circulation in an equine neck and back, the apparatus comprising: a neck portion 12 having a neck portion distal end coupled to the head portion, the neck portion defining a volume substantially conforming to an equine neck; and at least one magnetic material strip 30,32,30'32', 34,36,34'36' detachably coupled to the neck portion, each of the at least one magnetic material strips creating a magnetic field radiating from the at least one magnetic material strip towards the volume; and a body portion 10 coupled to a proximate end of the neck portion, the body portion defining a volume substantially conforming to an equine body midsection; and at least one magnetic strip 44,42,42',44'39,39',40,40' coupled to the body portion, wherein the magnetic strip creates a magnetic field. However, 855 is silent about a head portion substantially conforming to an equine head and defining a pair of eye openings and a pair of ear openings.

421 teaches horse blanket and hood apparatus having a head portion having a shape substantially conforming to an equine head coupled to a neck portion (col. 3, lines 20-26). It would have been obvious to one having ordinary skill in the art at the

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time the invention was made to employ a head portion that couples to the neck portion as taught by 421 in the apparatus of 855 so as to protect the head area of the horse.

For claim 20, 855 as modified by 421 (emphasis on 855) wherein the body portion coupling to the proximate end of the neck portion comprises one of a permanent attachment and a detachable coupling 16,20,14,18.

For claim 21, see the above claims 1,14,19 for explanation.

**Claim 15** is rejected under 35 U.S.C. 103(a) as being unpatentable over 855 as modified by 421 as applied to claim 1 above, and further in view of JP 2000342699 (herein 699). 699 teaches magnetic strips comprises one of a magnetic paste for use in therapeutic treatment. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ magnetic paste as taught by 699 as the preferred magnetic material of 855 as modified by 421, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

### ***Response to Arguments***

3. Applicant's arguments filed 8/24/04 have been fully considered but they are not persuasive.

**Applicant argued that DiNapoli does not teach front end 12 being coupled to a head portion, nor that front end 12 or any other part of blanket 10 defines a volume substantially conforming to an equine neck because front end 12 is not shown or described as extending above the chest and shoulders of the horse.**



The claim language states “a neck portion”, thus, the examiner is interpreting the language as broadly as it is being claimed. A portion can be a small area or a large area on the neck, thus, the front end 12 is considered a neck portion, clearly from col. 3, lines 11-12, that front end 12 “closes around the horse’s neck”. The area of the front end 12 that closes around the neck has a volume, small or large. The claim language never defines what is consider the neck portion, meaning the boundary which applicant consider a neck portion.

**Applicant argued that Battle does not teach a neck portion defining a volume substantially conforming to an equine neck, coupled to a head portion, and having at least one magnetic strip coupled thereto.**

Battle is merely relied upon for a notoriously well known concept of covering the head portion, the neck portion, and the body of a horse. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a head portion coupled to a neck portion (neck portion can be where ref. 97 is pointing at since, as explained above, a portion can be any area near the neck area) as taught by Battle in the blanket of DiNapoli in order to cover or protect the head area of the horse. Battle was never relied upon for the magnetic strip coupled to the neck portion because DiNapoli clearly teaches that already. As mentioned, Battle is merely relied upon for a very well known concept of covering the head of a horse with a material for protection.

All other arguments are similar to the already addressed argument above, thus, will not be repeated.

***Conclusion***


4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 703-305-0765. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Son T. Nguyen  
Primary Examiner  
Art Unit 3643

stn